SUPREME COURT OF THE UNITED STATES.

No. 42.

THE UNITED STATES, APPELLANT,

VERSUS

HEIRS OF ELEAZER WATERMAN.

APPEAL FROM THE SUPERIOR COURT OF EAST FLORIDA.

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Langtree & O'Sullivan, Print.

Before The Honorable Robert Raymond Reid, Judge of the Superior Court for the district of East Florida, and specially authorised by law to receive and adjudicate claims and titles to lands in the district of East Florida.

Be it remembered, that on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-one, William H. Bunitt and Louisa his wife, late Louisa Waterman, Joshua Hickman and Sarah Ann his wife, late Sarah Ann Waterman, William Hickman and his wife Helen, late Helen Waterman, Aden Waterman and Lydia Waterman, heirs and legal representatives of Eleazer Waterman, by their attorney, brought and filed in the clerk's office of the superior court for the district of East Florida, their petition or claim to certain land therein mentioned; which said petition or claim, is in the words and and figures following, to wit:

Petition to the Court.

TERRITORY OF FLORIDA—*Eastern District—Superior Court.*

To the Honorable, the Judge of said Court in Chancery sitting:

The Petition of William H. Bunitt and Louisa his wife, late Louisa Waterman, Joshua Hickman and Sarah Ann his wife, late Sarah Ann Watermam, William Hickman and his wife Helen, late Helen Waterman, Aden Waterman and Lydia Waterman, heirs and legal representatives of Eleazer Waterman, late of said territory, deceased, respectfully sheweth:

That upon the fourteenth day of February, eighteen hundred and sixteen, the said Eleazer Waterman then a Spanish subject, placed before Don Jose Coppinger then acting governor of the province of East Florida, by virtue of the authority derived from the Spanish Government, his petition containing proposals for the establishment of a saw mill to supply lumber to use both domestic and commercial of the province, and praying a grant of land of six miles square in a certain place or places in said petition named, as an indemnity and bounty for the erection of the mill proposed.

Your petitioners further shew that in consideration of the improvements and advantages arising to the province of East Florida, should the proposed mill be erected, the aforesaid Governor Coppinger did on the fifteenth day of February eighteen hundred and sixteen, order, decree, and grant, to the said Eleazer Waterman, the lands in his aforesaid petition asked for, to the amount of sixteen thousand acres, or the square of five miles with the precise condition annexed, that until the said Eleazer Waterman should build said mill, he should not have an absolute property in the lands so as aforesaid granted.

[Rec. No. 42.—1.]

Your petitioner further shews, that in or about the year eighteen hundred and sixteen, the said Eleazer Waterman commenced preparing lumber for the erection of said mill, and that during the years of eighteen hundred and sixteen, and eighteen hundred and seventeen, actually pursued and prosecuted the project of building, and sometime during the last mentioned period, actually finished and completed said saw mill at the place in his aforesaid petition named—with which said saw mill the said Eleazer Waterman afterwards actually did saw lumber. By virtue whereof the said heirs and representatives allege and aver that the condition to be performed by him, the said Eleazer Waterman, precedent to a fee simple investitive in him of the said lands in the aforesaid grant to him granted, was performed and finished according to, and in pursuance of, the true intent and meaning thereof.

Wherefore the said heirs and legal representatives say that they are advised, and allege they have a good and absolute inchoate right in fee simple to the lands in said petition asked for.

And your petitioners further shew that a part of the land aforesaid were surveyed to the said Eleazer Waterman, in one survey of five thousand four hundred and sixty acres, lying on the south side of St. Mary's river, near to Loftoms and McQueens, and will more plainly and fully appear by reference to the plat and certificate of said survey which is herewith annexed, all of which lands are lying within the jurisdiction of this court.

Your petitioners further state, that their aforesaid claim and the aforesaid survey have been filed before the Board of Commissioners appointed to ascertain claims and titles to lands in East Florida, who as they are informed and believe have refused to recommend the same to the favorable notice of the United States Government, and have rejected the same, a copy of all which proceedings will be filed herewith, and prayed to be made a part of this petition as exhibit No. . But your petitioners are advised and believe, and allege and aver, that the aforesaid grant is good and valid, and that thereby the said Eleazer Waterman was invested with an inchoate fee simple estate in the said lands in the grant granted, and that by the usages, customs, laws and ordinances of the King of Spain, he was entitled to a fee simple estate as aforesaid, and by the treaty between Spain and the United States of the 22nd of February 1819, the United States are bound to recognize and confirm to them the aforesaid heirs and legal representatives of the aforesaid Eleazer Waterman, deceased, the aforesaid title in as full and ample a manner as he, the said Eleazer Waterman, had and held the same, or could or ought to have held the same under the Spanish Government, if that government were now exercising sovereign jurisdiction over this territory.

Without this the United States, as far as they know, are the rightful claimants to said lands.

Your petitioners in consideration of the premises, pray that this honorable court will hold jurisdiction of this their petition, and that a copy hereof, and a citation to shew cause, &c., may be served on Thomas Douglas, Esquire, United States district attorney for this

district, pursuant to the provisions of the stutute in such cases made and provided—and finally, that your honor will decree to your petitioners a confirmation of their title to the lands in this their petition claimed, and such other and further relief as in equity, &c., and your petitioners as in duty bound, &c.

JOS. B. LANCASTER and
SAMUAL L. BUNITT,
Atty's for the heirs and legal representatives of Eleazer Waterman, dec'd.

And afterwards, to wit, on the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and thirty-two, Thomas Douglas, Esquire, United States attorney for the district of East Florida, brought and filed in the clerk's office aforesaid, his answer to the said petition; which said answer is in the words and figures following, to wit:

Answer of United States Attorney.

The answer of Thomas Douglas, United States attorney for the district of East Florida, to the petition or bill of complaint of William H. Bunitt and Louisa his wife, late Louisa Waterman, Joshua Hickman and Sarah Ann his wife, late Sarah Ann Waterman, William Hickman and Helen his wife, late Helen Waterman, who as heirs and legal representatives of Eleazer Waterman, deceased.

The said attorney, in the name and for, and on behalf of the same United States, saving and reserving to them now and all times hereafter, all and all manner of benefit of exception to the manifold errors, defects, and irregularities in the said petition or bill of complaint contained, for answer thereunto, or unto so much thereof, as is material and necessary for them to answer unto, answereth and saith: That he is a stranger to all and singular the matters and things alleged in the said petition or bill, relative to the making of the said supposed grant by Jose Coppinger, and of the making of the said survey by the said George I. F. Clarke, [if indeed any such grant or survey were ever made, and which is by no means admitted,] or of the building of the said saw mill in said petition mentioned, and therein alleged to have been built by the said Eleazer Waterman.

And this respondent farther answering, denies that the said supposed grant, [if any such was ever made,] was made by the said Don Jose Coppinger by virtue of any power or authority derived from the Spanish Government, or that he, the said Don Jose Coppinger had any such power or authority—and this respondent also denies that the said supposed grant is good and valid, or that thereby the said Eleazer Waterman was invested with an inchoate or fee simple, [or any other,] estate in the lands in the said supposed grant described, or that by the usages and customs, laws and ordinances of the King of Spain, he was entitled to a fee simple or any other estate in said lands, or that said petitioners are invested with any right or estate in said lands, or that the United States were or are

bound by the treaty of the 22d of February 1819, or in any other manner to recognize or confirm the claim of the petitioners in any way whatever, and avers that the said supposed grant, [if any such was ever made,] was and is entirely null and void.

And the said respondent further answering, saith, that he insists on behalf of the same United States, on all such right, title and interest in the premises in the said petition or bill of complaint mentioned, as the said United States shall appear to have therein.

And this respondent humbly submits the same to the judgment, order and direction of this honorable court, and also humbly prays that this honorable court will take care of, and protect the right and interest of the said United States in the premises, and that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THOS. DOUGLAS,
United States Attorney of East Florida.

And afterwards, to wit, on the sixth day of July, in the year of our Lord one thousand eight hundred and thirty-eight, the said claimants, by their solicitor, brought and filed in the clerk's office aforesaid, their replication; which is in the words and figures following, to wit:

Replication.

THE HEIRS OF ELEAZER WATERMAN
vs.
THE UNITED STATES.

These replicants saving and reserving to themselves, all and all manner of exception which may be had or taken to the manifest errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereto saith, that these replicants do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law, to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by the replicants—without that, that any other matter or thing in the said answer, contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true: all which matters and things the replicants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray as in their said bill they have already prayed, &c.

JNO. DRYSDALE,
Solicitor for Petitioner.

And afterwards, before the superior court for the district of East Florida, holden at the court house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred

and thirty-eight, to which term this cause had come by regular continuance, to wit: on Monday the first day of said term, and the ninth of said month, the following entry of record was made in this cause, to wit:

Death of Parties Suggested.

HEIRS OF ELEAZER WATERMAN, deceased, } Land Claims,
vs. } 16,000 acres.
THE UNITED STATES. }

This day came the parties by their attorneys and the counsel for the said claimants, gives the court to understand and be informed, that since the commencement of this cause, William H. Bunitt, Joshua Hickman and Sarah Ann his wife, portion of said heirs, have departed this life.

Evidence aud Testimony offered and read in this cause at the hearing thereof, and numbered from one to four inclusive, viz:

No. 1.

Offered and read by Claimant.

TRANSLATION.

Memorial of Waterman.

HIS EXCELLENCY THE GOVERNOR.

Don Eleazer Waterman, an inhabitant of this province, most respectfully states to your excellency, that in the year one thousand eight hundred and six, permission was granted to him by the government, to enable him to erect a water saw mill, in the place known under the name of Joly on the river St. Marys: That after having actually procured whatever was necessary, and being ready to carry the same into execution, the insurrection of the province took place—but now that the tranquility thereof is restored, he wishes to carry the said mill into effect in order to supply the town of Ferandina with sawed lumber, of which it is in great want, and also for the purposes of trade, and your petitioner wishing before he undertakes to sit up such an establishment, which is very costly, to secure a tract of pine land sufficient for the building and for the suppy of said mill, in order at least to indemnify himself for the expenditures, and your excellency knowing well the benefits and advantages which the treasury will receive from such branches of industry, he most respectfully supplicates your excellency to be pleased to grant him your superior permission to erect said mill in the designated place, and for the supply thereof, all the land to the distance of three miles in the rear of the said mill, by which a square of six miles will be formed; which favor he hopes to receive from the justice of your excellency.

St. Augustine of Florida, 14th of February, 1816.

ELEAZER WATERMAN.

Grant to Waterman.

DECREE.

ST. AUGUSTINE, 15th FEBRUARY, 1816.

I grant, without prejudice to a third party, the permission which the petitioner solicits for the erection of a water saw mill on the river St. Mary, under the precise condition, that until the said work be completed, the grant of land will be null and of no effect, said grant of pine land will contain two miles and a half on every side, so as to form a square of five miles, in order that he may avail himself of the timber thereof; and every other person is prohibited to make use of the same; with the understanding that if the building and the erection of the said machinery does not take place, this grant will be null and of no value; it being understood that said grant has only for its object the protection of the inhabitants and settlers, and to stimulate them to the pursuits of industry, on account of the known advantages resulting therefrom to the province, and consequently to the interests of the King. Let a certificate be issued to the petitioner.

COPPINGER.

Jacksonville, 6th May, 1831.

I certify that the preceeding is a correct translation of the Spanish document annexed.

A. GAY, *Translator and Interpreter of the Superior Court.*

No. 2.

Offered and read by Claimant.

TRANSLATION.

Certificate and Plat of Survey.

I, Don Jorge Clarke, Lieutenant of the militia of St. Augustine of Florida, and by the government of said place and province, appointed surveyor general thereof, do certify, that I have surveyed and delineated for Don Eleazer Waterman five thousand four hundred and sixty acres of land on the southern part of Bells river, and in the swamp of Lofton and McQueen, in part of a greater quantity which was granted to him on the fifteenth of February, one thousand eight hundred and sixteen, for the erection of a water saw mill, which tract is conform to the following plat, and to the copy thereof which I keep.

Northern District of East Florida, 21st of March, 1821.

JORGE I. F. CLARKE.

[Here is to follow the annexed plat of survey.]

JACKSONVILLE, 6th OF JUNE, 1831.

I certify that the within is a correct translation of the Spanish document annexed.

A. GAY, *Translator and Interpreter of the Superior Court.*

No. 3.

Offered and read by Claimant.

TERRITORY OF FLORIDA.

Commission to examine Homer, Kelly, Hart, Dell, and Wingate.

In the name, and by the authority of the United States of America, to John L. Doggett, Esquire, greeting:

Whereas a certain claim to land is now depending in the superior court for the eastern district of Florida, in which said claim the heirs of Eleazer Waterman, deceased, are claimants, and the United States of America defendant, and it being necessary to the investigation of said cause, to have the testimony of Charles Homer, William Kelly, Isaiah D. Hart, Jas. Dell and Jeremiah Wingate—the said John L. Doggett having been named by the claimants and the said defendant, as commissioner to examine said witnesses on certain interrogatories.

Know ye, that confiding in your prudence, ability and integrity, you are by these presents appointed, and full power and authority are hereby given to you, diligently to examine the aforesaid witnesses upon certain interrogatories to be exhibited to you, as well on the said claimants, as on the part of the said defendants, or of either party in said cause, and therefore you are authorised and requested, on a certain day, or on certain days, and at a certain place, or at certain places, to cause the said witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their corporal oaths or solemn affirmations, first taken before you, and to take such their examinations and reduce them to writing on paper, and when you shall have so taken them, to sign the same with your name, and enclose and seal the whole together, conformably to the instructions hereunto subjoined.

And you are hereby further requested, that before you act in, or be present at, the swearing or solemn affirming and the examining of any of the said witnesses, you do make oath or solemn affirmation, that according to the best of your knowledge you will truly, faithfully, and without partiality to any or either of the parties in said cause, take the examination and deposition of every witness produced and examined by virtue of this commission, upon the interrogatories hereunto annexed and produced to you, and that you will not publish or

make known to any person whomsoever, except the clerk or clerks who may by you be employed and sworn to secrecy in the execution of this commission, the contents of any of the depositions of the witnesses to be taken by you in this commission named, until publication shall pass by rule or order of the said superior court.

Witness the Honorable Robert Raymond Reid, Judge of
[SEAL.] our superior court for the district of East Florida, this 22nd day of June, A. D. 1838.

K. B. GIBBS, *Clerk.*

Instructions.

When the testimony is taken, the commissioner is required to sign his name at the bottom of each sheet of the depositions, and of the whole, after fixing and sealing the several sheets together, then to enclose the whole examination, commissions and all, in an envelope sealed up with your name written on the outside across the seal, and to endorse the packet on the corner thereof, with the names of the parties, and to direct the same to Kingsley B. Gibbs, Clerk of said court at St. Augustine, and forward it to him.

Interrogatories to Homer, Kelly, Hart, Dell, and Wingate.

HEIRS OF ELEAZER WATERMAN *vs.* THE UNITED STATES. } Claim for 16,000 acres of Land.

Interrogatories to be propounded to Charles Homer, William Kelly, Isaiah D. Hart, James Dell, and Jeremiah Wingate, witnesses to be produced, sworn, and examined on the part of the petition in the above entitled cause.

First. Did you know Eleazer Waterman, late of East Florida, deceased? Do you know what children he left at his death, and whether his daughters have married since his death? State what you know of these matters, and with whom his daughters intermarried?

Second. Are not Joshua Hickman and Sarah Ann his wife, now dead? If they are, state when they respectively died—and what children or child they left—and whether they or any of them are or is now alive, and their ages.

Third. Is it or not within your knowledge, that the said Eleazer Waterman, before his death, erected and put into operation a saw mill, at the place called Joly, on St. Marys river, in East Florida? Is not Bells river a branch on the St. Marys?

Fourth. If you say that the said mill was erected, state at what time its erection was completed, and it went into operation.

JNO. DRYSDALE,
Attorney for Petitioners.

Cross Interrogatories.

First. If you say that a saw mill was erected and put into operation by the said Eleazer Waterman, please be particularly as to the time when the same went into operation?

Second. Please state whether you ever saw the said mill, or whether you have only heard of it from other persons—please state if you ever saw it in operation?

Third. Please give a description of said mill, its size, its power, and the quantity of lumber it was capable of sawing per day?

Fourth. If you say you ever saw said mill, please state as particularly as you can where the same was located?

S. S. BUNITT,
Assistant Counsel U. S.

Answers of Homer.

HEIRS OF ELEAZER WATERMAN } Claim for 16,000
vs. } Acres of Land.
THE UNITED STATES. }

Answers of Charles Homer to the said Interrogatories, a witness in the above case.

Answer to the first direct interrogatory, witness says that he did know Eleazer Waterman, late of East Florida, deceased, left six children, viz: Sarah Ann, Ellen, Louisa, Lydia, Aden, Eleazer. His daughters have since married—Sarah Ann married Joshua Hickman, Louisa married William H. Bunitt, Ellen married William Hickman, Lydia married Milo K. Pinkston.

To the second direct interrogatory, witness says, that Joshua Hickman and his wife Sarah Ann are both dead—witness says they died sometime since; but he can't precisely tell how long since, or the time when, they are dead, never saw their children, has heard that they had several, some have died, and is unable to state from his own knowledge the ages of the living.

To the third direct interrogatory, witness says that it is within his knowledge, that the deceased, in his life time, erected and put into operation a saw mill at a place called Joly, on St. Marys river, in East Florida—three mile river is a cut off, and is a branch of St. Marys or Bells river. It is the pass from one river to the other.

To the fourth direct interrogatory, witness says that Waterman's mill, located at the place aforesaid, was completed sometime in the year eighteen hundred and eleven or thereabouts, as well as witness can recollect—and has seen it sawing about this time: It was a perfect and complete mill, and cost deceased a great deal of money.

Answers to Cross Interrogatories.

To the first cross interrogatory, witness says, he thinks this saw mill was put in complete operation in 1811; but witness says that he is an old man in his seventy-third year, and he may err in point of time, but does not think, however, that he does; but Waterman built a mill at a place called Joly, on St. Marys river in East Florida, completed it and it sawed well; witness states that he has seen it sawing.

To the second cross interrogatory, witness says, that he don't speak from hearsay at all, but from occular testimony; he has seen the said mill sawing lumber.

To the third cross interrogatory, witness says the mill was well built; it was large building, thinks it must have been forty-five or fifty feet long, and perhaps thirty or thirty-five feet wide; don't well know its power. It is great while since witness see it saw. Don't like to undertake to state what it was capable of cutting per day. It was accounted a good mill.

To the fourth cross interrogatory, witness says, that said mill was located at a place called Joly, on St. Marys river in East Florida, nearly opposite the town of St. Marys.

CHARLES HOMER.

Sworn and subscribed to, before me at Talbot Island, August 24th, 1838.

JOHN L. DOGGETT,
Commissioner.

Answers of Hart.

THE HEIRS OF ELEAZER WATERMAN, dec'd, *vs.* THE UNITED STATES. } Claim for 16,000 Acres of Land.

The answers of J. D. Hart to the direct interrogatories, a witness in the above case.

To the first direct interrogatory; witness says, that he knows Eleazar Waterman, deceased, in his life time, and late of East Florida; witness says that he knew personally all the children the deceased left at his death, and these are they that follow, and their names in the order of their ages: Sarah Ann, Ellen, Louisa Jane, Lydia, Aden, and Eleazer. These daughters have all married since the death of deceased, Sarah Ann married Joshua Hickman, Ellen married William Hickman, Louisa married William H. Bunitt, Lydia married M. K. Pinkston.

To the second direct interrogatory, witness says that Sarah Ann and Joshua Hickman are both dead, Sarah Ann died, witness thinks, in July 1836, and Joshua Hickman died in August 1837. Mrs.

Hickman left living five children at her death, one died soon thereafter, and once has died since the father, Joshua Hickman died—three still are alive.

To the third direct interrogatory, witness says, that he knows the said Eleazer Waterman, before his death did erect a saw mill and put the same in operation, at a place called Waterman's Bluff, on Bells river or Joly river in East Florida, near St. Marys river, and nearly opposite the town of St. Marys; don't know about three mile river.

To the fourth direct interrogatory, witness says, that said mill was erected and went into operation sometime in the year 1814 or 1815, can't be certain which.

Answers to Cross Interrogatories.

To the first cross interrogatory, witness says, he thinks said mill went into operation in the year 1814 or 1815, as well as witness can recollect.

To the second cross interrogatory, witness says, that he has seen the mill, never saw it sawing, but has seen where it had sawed.

To the third cross interrogatory, witness says, he can't give any particular decription of the mill, other than to speak generally. It was a large house and suitable to the purposes for which it was erected: can't state the power of the mill or the quantity of lumber it was capable of cutting per day.

To the fourth cross interrogatory, witness says, that said mill was located at a place called Waterman's Bluff on Bells river, near St. Marys river in East Florida, opposite, or nearly so, to St. Marys town.

J. D. HART.

Sworn and subscribed to, before me at Jacksonville, August 30th, 1838.

JOHN L. DOGGETT,
Commissioner.

Answers of Dell.

HEIRS OF ELEAZER WATERMAN, dec'd, *vs.* THE UNITED STATES. } Claim for 16,000 Acres of Land.

Answers of James Dell to the direct interrogatoreis, a witness in the above case.

To the first direct interrogatory, witness says, that he did know Eleazer Waterman, late of East Florida, deceased—deceased at his death left sons and daughters; the names of the children of deceased are these, called in the order of their ages: Sarah Ann, Ellen, Louisa Jane, Lydia, Aden, Eleazer; Sarah Ann married Joshua Hickman, Ellen married William Hickman, Louisa married William H. Bunitt, and Lydia married Milo K. Pinkston.

To the second direct interrogatory, witness says, that both Joshua Hickman and Sarah Ann his wife are dead. Sarah Ann died some time in July 1836, Joshua Hickman died in August 1837, they had five children living at the death of Mrs. Hickman, one of them died soon after her death, one died since the death of Joshua Hickman, and three are still living.

To the third direct interrogatory, witness says, that it is true that Eleazer Waterman, dec'd, in his life time did erect and put in operation a saw mill at a place called Joly, on St. Marys river in East Florida—whether three mile river is a branch of St. Marys or not, witness says he can't tell: has stated the location of the mill, and the current name of the waters at the time the mill was perfected, so far as he can recollect, or so far as to his recollection, he has heard.

To the fourth direct interrogatory, witness says, that he can't be positive as to the time this mill was erected, perhaps in 1811, perhaps since; thinks it was in that year, but can't be positive as to the time. It might have been in 1814, not later.

Answers to Cross Interrogatories.

To the first cross interrogatary, witness says, that he can't be more positive than he has been, as to the time when said mill was finished.

To the second cross interrogatory, witness says, that he has seen the mill often; never saw the mill work, but has seen where it did work, and knows well enough it did saw.

To the third cross interrogatory, witness says, that said mill house was large and commodious. It must have been forty feet long by thirty feet wide; can't tell the quantity of lumber it would cut, nor can witness state its power; the mill was constructed at a heavy expense.

To the fourth cross interrogatory, witness says, that said mill was located in East Florida, nearly opposite to the town of St. Marys, at a place called Joly or Bells river.

JAMES DELL.

Sworn to, and subscribed before me at Jacksonville, August 29th, A. D., 1838.

JOHN L. DOGGETT,
Commissioner.

Answers of Wingate.

HEIRS OF ELEAZER WATERMAN, dec'd, *vs.* THE UNITED STATES. } Claim for 16,000 Acres of Land.

Answers of Jeremiah Wingate, a witness in the above case to the direct interrogatories.

To the first direct interrogatory, witness says, he knew Eleazer Waterman, late of East Florida, deceased—witness says he recollects his children, and knows that his daughters have married since his death; the names of the children are these, viz: Sarah Ann, Ellen, Louisa, Lydia, Aden and Eleazer: Sarah Ann married Joshua Hickman, and Ellen married William Hickman.

To the second direct interrogatory, witness says, that Joshua Hickman and Sarah Ann his wife are both dead, can't say when they died, but sometime since; believes they left five children, and that four, or three of them, are alive; their ages he can't state, but knows they are young, for it is not a great many years since they were married.

To the third direct interrogatory, witness says, that it is within his knowledge that the said Eleazer Waterman, before his death, erected and put in operation a saw mill at the place called Joly, on St. Marys river in East Florida; witness says that three mile river and Joly river are the same; it is a cut off, and unites Bells river with St. Marys river; should say that it was rather a branch of Bells river; —the mill was erected, as witness has stated, at a place called Joly, on the Bluff, opposite to the mouth of three mile river.

To the fourth direct interrogatory, witness says, that the said saw mill went into operation sometime in the fall of the year 1811; about that time, after it was finished, deceased notified his neighbors to come down on a certain day, and in their presence he put the mill to work; witness was invited, and was present and saw her start and saw, and she performed well; witness thinks that there was present on that occasion about thirty people, but he says they are now almost every one dead.

Answers to the Cross Interrogatories.

To the first cross interrogatory, witness says, that he has stated that the mill went into full operation in the fall of the year 1811.

To the second cross interrogatory, witness says, that he has said he was present and saw the mill put to work, and that she worked well.

To the third cross interrogatory, witness says, that the mill was a good and substantial work—she run two saws; the house was at least thirty feet wide and fifty feet long; the carriages were made to receive a log thirty feet long; she would cut per day fifteen hundred feet of inch lumber. Waterman told witness she cost him twelve thousand dollars; she was a complete piece of work.

To the fourth cross interrogatory, witness says, that said mill was located on the Bluff on Bells river, at a place called Joly, and opposite the mouth of three mile river or cut off; commonly called Joly river.

JEREMIAH WINGATE.

Sworn and subscribed to, before me in Nassau county, July 30th, A. D., 1838.

JOHN L. DOGGETT, *Commissioner.*

No. 4.

Offered and read by Claimants.

TERRITORY OF FLORIDA.

Commission to Examine Kingsley, Jennings, Homer, Dell, Hart, Wingate and Picket.

In the name and by the authority of the United States of America, to John L. Doggett, Esquire, greeting:

Whereas a certain claim to land is now depending in the superior court for the eastern district of Florida, in which said claim the heirs of Eleazer Waterman, deceased, are claimants, and the said United States of America defendant, and it being necessary to the investigation of said cause to have the testimony of Samuel Kingsley, Joel Jennings, Charles Homer, James Dell, Isaiah D. Hart, Jeremiah Wingate and Seymour Picket; the said John L. Doggett having been named by the said claimants and the said defendant as commissioner to examine said witnesses on certain interrogatories.

Know ye, that confiding in your prudence, ability and integrity, you are by these presents appointed, and full power and authority are hereby given to you, diligently to examine the aforesaid witnesses upon certain interrogatories to be exhibited to you, as well on the part of the said claimant as on the part of the said defendant, or of either party in said cause, and therefore you are authorised and requested on a certain day, or on certain days, and at a certain place, or at certain places, to cause the said witnesses to come before you, and then and there to examine each of them apart on the said interrogatories on their corporal oaths or solemn affirmations first taken before you, and to take such their examinations and reduce them to writing on paper, and when you shall have so taken them, to sign the same with your name, and enclose and seal the whole together conformably to the instructions herunto subjoined.

And you are hereby further requested, that before you act in, or be present at the swearing or solemn affirming and the examining of any of the said witness, you do make oath or solemn affirmation, that according to the best of your knowledge, you will truly, faithfully, and without partiality to any or either of the parties in said cause, take the examination and deposition of every witness produced and examined by virtue of this commission, upon the interrogatories hereunto annexed and produced to you, and that you will not publish or make known to any person whomsoever, except the clerk or clerks who may by you be employed, and sworn to secresy in the execution of this commission, the contents of any of the depositions of the witnesses to be taken by you in this commission named, until publication shall pass by rule or order of said superior court.

[SEAL OF THE COURT.] Witness the Honorable Robert Raymond Reid, Judge of our superior court for the district of East Florida, this 22d day of September, A. D., 1838.

K. B. GIBBS, *Clerk.*

Instructions.

When the testimony is taken, the commissioner is required to sign his name at the bottom of each sheet of the depositions, and of the whole after fixing and sealing the several sheets together, then to endorse the whole examination, commission and all, in an envelope, sealed up, with your name written on the outside across the seal, and to endorse the packet on the corner thereof with the names of the parties, and to direct the same to Kingsley B. Gibbs, clerk of said court at St. Augustine, and forward it to him.

Interrogatories to Kingsley, Jennings, and Picket.

IN THE SUPERIOR COURT, *Eastern District, Florida.*

THE HEIRS OF ELEAZER WATERMAN *vs.* THE UNITED STATES. } Land Claim.

Interrogatories to be propounded to Samuel Kingsley, Joel Jennings and Seymour Picket, residents of Duval county in the territory of Florida, and who are to be produced, sworn and examined as witnesses on the part of the petioners in the above entitled cause.

First. Do you or not know Eleazer Waterman, late of East Florida, deceased; when did he die?

Second. Do you or not know any thing of Mr. Watermans having erected a water saw mill in East Florida, while that province belonged to the Spanish Government?

Third. If you answer the last preceeding interrogatory affirmatively, be pleased to state at what place the said mill was erected, whether it went into operation; at what time it was completed and went into operation; the quantity of lumber it was capable of sawing per day, and whether it was a good substantial mill or not; relate fully what you know on the several points, and especially be as explicit as you can as to the time the mill was built?

Fourth. Do you or not know any other matter or thing touching the erection of the said mill which will benefit the petitioners; if you do, relate the same fully.

JOHN DRYSDALE,
Solicitor for Petitioners.

Interrogatories to Homer, Dell, Hart, and Wingate.

Interrogatories to be exhibited to Charles Homer, James Dell, Isaiah D. Hart and Jeremiah Wingate, witnesses also to be produced, sworn and examined on behalf of the petitioners in the above entitled cause.

First. Have you or not testified in this cause before?

Second. If you answer the first interrogatory affirmatively, state whether you do or do not remember the time, at which you testified that Elezer Waterman erected a water saw mill at a place called Joly on St. Marys river?

Third. Be pleased to recal circumstances to your recollection, and after reflection state whether you have or not committed a mistake in your former testimony, as to the time at which Mr. Waterman built and completed his mill at Joly; may it not have been at a later perior than you have before testified it was; was it completed before or after the revolution of 1812? If after, how long after?

If after reflection you shall be able to say this mill was built at a later period, state particularly the time it was built and completed and first went into operation, and the circumstance which enables you to correct your former testimony in this respect?

Fourth. When did Elezer Waterman die?

JOHN DRYSDALE,
Solicitor for Petitioners.

The above named witnesses will please to state, only what they personally know, and not what they may have heard.

THOMAS DOUGLAS,
United States Attorney.

Answers of Kingsley.

HEIRS OF ELEAZER WATERMAN, dec'd,
vs.
THE UNITED STATES.
} Land Claim.

Answers of Samuel Kingsley to the direct interrogatories, a witness in the above case.

To the first direct interrogatory, witness says, that he knew Eleazer Waterman, late of East Elorida; is not certain at what time he died, but is certain it was long after he had built his mill, and thinks it was in 1822.

To the second direct interrogatory, witness says, that deceased built a saw mill in East Florida while it was a province of Spain, and of course belonged to the Spanish Government.

To the third direct interrogatory, witness says, that said mill was erected at a place called Waterman's Bluff on Bells river, a branch or arm of St. Marys river in East Florida, and nearly opposite the town of St. Marys; said mill went into operation; witness says he worked on said mill; it went into operation in the year 1816, and afterwards witness labored upon her, and she was finally completed in the early part of 1817; witness says he can't state what amount she was capable of cutting per day; witness says that the mill house was about fifty feet long, and the whole work was good and substantial; witness says that said mill was built and went into operation

sometime in 1816, and afterwards witness worked upon her and made some alterations in her, and that she was finally finished and made complete, according to her plan in 1819.

To the fourth direct interrogatory, witness says, that he knows no more about the matter.

SAMUEL KINGSLEY.

Sworn and subscribed to, before me, at Jacksonville, the 8th day of October, 1838.

JOHN L. DOGETT, *Commissioner.*

Answers of Jennings.

HEIRS OF ELEAZER WATERMAN
vs.
THE UNITED STATES. } Land Claim.

Answers of Joel Jennings to the direct interrogatories, a witness in the above case.

To the first direct interrogatory, witness says, that he did know Eleazer Waterman, deceased, in his life time—witness can't say when he died, but it was after the year 1816.

To the second direct interrogatory, witness says, that said Eleazer Waterman erected a saw mill in East Florida, and while the same was a province of Spain.

To the third direct interrogatory, witness says, that said mill was erected at a place called Waterman's Bluff, on Joly river in East Florida, nearly opposite the town of St. Marys—said mill did go into operation—witness says that he built this mill, or that he was the master builder of it, and that the same was completed, and went into operation, sometime in the autum of 1816—witness says that this mill was capable of cutting between four and five thousand feet of lumber per day, and that it was a well constructed, and staunch work of its kind—witness says that he can say no more than this, that he was the principal builder of the mill; that he finished her in the fall of 1816, and set her a sawing.

To the fourth direct interrogatory, witness says, that he knows no more about this matter than he has stated; except, that he knows that at the time witness was to work on the mill, deceased had land surveyed for him, in the vicinity of the mill, by the Spanish Government, in consideration of his erecting the same.

JOEL JENNINGS.

Sworn and subscribed to, by me, at Center-village, this 6th day of October, 1838.

JOHN L. DOGGETT, *Commissioner.*

[Rec. No. 42.—3.]

Answers of Picket.

THE HEIRS OF ELEAZER WATERMAN
vs.
THE UNITED STATES. } Land Claim.

Answers of Seymour Pickett to the direct interrogatories, a witness in the above case.

To the first interrogatory, witness says, that he did know Eleazer Waterman, deceased, in his life time; he was a resident of East Florida—witness says, that he thinks deceased died in the year 1822 or 1823, and witness won't be positive as to the year in which he died.

To the second direct interrogatory, witness says, that the said Eleazer Waterman, deceased, did erect a saw mill in East Florida, and while the Floridas belonged to Spain, and were under the Spanish Government.

To the third direct interrogatory, witness says, that deceased erected a saw mill at a place called Waterman's Bluff, on Bells river, nearly opposite to the town of St. Marys—witness says that the said mill went into operation—he knows it did—he saw it—said mill went into operation sometime in the fall of 1816—thinks it was completed in October of the year one thousand eight hundred and sixteen—witness says, that he can't tell what amount of lumber said mill was capable of sawing per day. But said mill was built by a good mechanic, at a great expense, and was a good and substantial piece of work—witness says, that he has been as specific as he can be, in his accout of the mill, and the time that it was built and went into operation. This mill was built by Joel Jennings, at least he was master builder, and it was finished, and it sawed sometime in the autumn of 1816, and thinks it began to work in October of that year, knows it went into operation at this time, and has seen it often, and that it was a good and substantial work. This mill was built in the year 1816, and went into operation in the fall of that year, and as witness, thinks it went to work, as well as he can recollect, it was in October of that year.

To the fourth direct interrogatory, witness says, that he knows no more than this, that Eleazer Waterman did build the mill, as before stated, and that it was built at a great expense, and went into operation and sawed in October of the year 1816.

SEYMOUR PICKETT.

Sworn and subscribed to, before me, at six mile creek, October 6th, A. D., 1838.

JOHN L. DOGGETT,
Commissioner.

Answers of Dell.

HEIRS OF ELEAZER WATERMAN
vs.
THE UNITED STATES. } Land Claim.

Answers of James Dell, a witness in the above case, to the direct interrogatories.

To the first direct interrogatory, witness says, that he has testified before in this case.

To the second direct interrogatory, witness says, that he believes that he sated, Waterman erected his saw mill at a place called Joly or Bells river, an arm of St. Marys river, in the province of East Florida, sometime in the year 1814.

To the third direct interrogatory, witness says, that upon more mature reflection, he is convinced that he did commit an error in the testimony givin by him, and referred to at this time. It is now clear to the mind of witness, from an event of his own life, which calls it clearly to his mind, that the said Waterman erected his mill at the place above named, in the year 1816, and completed it in the fore part of the year 1817—witness says, in further explanation of the occasion of his error, that he was called upon to answer in haste, he was unwell, and did not take the pains he might, and should have taken, in the matter referred to him, and enquired of.

To the fourth direct interrogatory, witness says, he don't, at this moment, recollect the precise year in which Waterman died. It was, however, several years after he had erected his saw mill, concerning which, witness has spoken above—witness says, that in what he testified, it is entirely from his own knowledge.

JAMES DELL.

Sworn and subscribed to, before me, at Jacksonville, the 8th day of October, 1838.

JOHN L. DOGGETT,
Commissioner.

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-eight, to wit: on Friday the seventeenth day of said term, and the twelfth day of said month of October, the following entry of record was made in this cause, to wit:

Hearing of Cause.

WILLIAM HICKMAN and HELEN his wife, late Helen Waterman, LOUISA BUNITT, late Louisa Waterman, and others, heirs and legal representative of Eleazer Waterman, deceased.
against
THE UNITED STATES. } Land Claims, 16,000 Acres.

This day came as well the counsel for the said claimants, as the attorney for the United States, and this cause, came on to be heard this day, and the petition of the said claiments, with the answer of the United States attorney thereto, together with the replication of the said claimants, were read to the court. The claimants counsel then offered and read in evidence in this cause, without objection from the attorney for the United States, the depositions of Charles Homer, Jeremiah Wingate, Isaiah D. Hart, James Dell, Samuel Kingsley, Joel Jennings and Seymour Pickett, taken under commissions issued in this case. The claimants counsel also offered in evidence, the memorial of, and grant to, Eleazer Waterman, for the land claimed in this case, dated 15th February, 1816, together with a certified translation thereof, by the translator and interpreter of this court, which was received without objection from the attorney for the United States—the claimants counsel then offered in evidence the certificate and plat of survey for 5,460 acres of land, with the certified translation thereof, by the translator and interpreter of this court, to which the attorney for the United States objected, alleging that the said survey does not follow the calls of the grant.

Decree of the Court.

And the evidence and testimony in this cause being concluded, and this cause submitted to the court, and the said court having heard the said testimony, and having examined the claim of the said petitioners, together with the answer of the attorney for the United States, and having maturely considered the same, doth order, adjudge, and decree that this claim is valid, and that in accordance with the laws and customs of Spain, and under and by virtue of the late "treaty of amity, settlement, and limits between the United States of America, and the King of Spain," ratified by the President of the United States, on the 22nd of February, 1821, and under, and by virtue of the laws of Nations, and of the United States, it is hereby confirmed, adjudged, and decreed unto the said claimants, to the extent, for the number of acres, and at the place, as in the memorial of the said Eleazer Waterman to the Governor, and the decree of the Governor thereon, is set forth, to wit: "a square of five miles" of land, situated "in the place, known under the name of Joly, on the river St. Marys."

Appeal.

Whereupon, the said attorney of the United States moved the court, that an appeal be granted, in this case, on behalf of the said United States, from the aforegoing decree of this court, to the Supreme Court of the United States, and that a citation, with notice of said appeal may be forthwith issued by the clerk of this court to the appellees, and that the same may be served by the marshal of each district upon the said appellees, or their solicitor, or agent, and returned to this court, within thirty days from the issuing thereof—all of which is ordered accordingly.

In pursuance of the above order, a citation of appeal was duly issued in this cause; and which said citation, and the return of the marshal thereon, is in the words and figures following, to wit:

Citation of Appeal and Return.

In the name and by the authority of the United States of America, to William Hickman, and Helen his wife, late Helen Waterman, Louisa Bunitt, late Louisa Waterman, and others, heirs and legal representatives of Eleazer Waterman, deceased, or to their agent attorney, or solicitor, greeting:

You are hereby cited and admonished, that an appeal has been taken on the part of the United States, from the decree of the superior court for East Florida, to the Supreme Court of the United States, in a certain claim to sixteen thousand acres, of acres wherein you, the said heirs, legal representatives of Eleazer Waterman, deceased, are claimants, and the said United States respondent, and that the record in said cause will be forwarded to the said Supreme Court, to be placed on the docket of said court, at the next term thereof, to be holden on the second Monday of January next.

[SEAL OF THE COURT.] Witness the Honorable Robert Raymond Reid, Judge of our said court, at the court-house in the city of St. Augustine, this 13th day of October, A. D., 1838.

K. B. GIBBS, *Clerk.*

THOS. DOUGLAS, *District Attorney.*

J. DRYSDALE,
Solicitor for Claimants.

"Served by delivering a copy of this process to John Drysdale, Esq., Oct. 13th, 1838."

"JNO. M. FONTANE,
Deputy Marshal."

SUPREME COURT—*District of East Florida.*

I, Kingsly B. Gibbs, clerk of the said court, for the district aforetaid, do hereby certify, that the foregoing thirty-six pages contain a full, true, and complete transcript of the record and proceedings, had in the case therein named, in my charge; and that the plat of survey attached to, and made a part of this record, is faithfally taken and copied from said document, as offered in evidence in said cause, on file in my office.

In witness whereof, I have hereto set my hand at the city of St. Augustine, first day of November one thousand eight hundred and thirty-eight.

K. B. GIBBS, *Clerk.*